

1 BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
2 EASTERN WASHINGTON REGION
3 STATE OF WASHINGTON
4

5 CPM DEVELOPMENT CORPORATION,

6
7 Petitioner,

8 v.
9

10 CITY OF SPOKANE VALLEY,

11 Respondent.
12
13

Case No. 15-1-0003c

**ORDER GRANTING
MOTION TO DISMISS**

14 **I. INTRODUCTION**

15 Petitioner CPM Development Corporation challenged a temporary moratorium on
16 mining and mining site operations within the City of Spokane Valley. Respondent City of
17 Spokane Valley ("City") moved the Board for an order dismissing the petition for review in its
18 entirety.
19

20 The City asserts it complied with the procedural requirements of RCW 36.70A.390
21 when adopting the moratorium. In opposition, Petitioner argues that the challenged
22 ordinance disregards the GMA's mandate to preserve and protect mineral resource lands.
23 Further, Petitioner asserts that the Board should retain jurisdiction to consider the
24 moratorium on the merits, stating it is extremely unlikely the City's comprehensive plan
25 update will be completed by February 2016, when the mining moratorium is scheduled to
26 expire.
27

28 A Motion Hearing was held telephonically on November 17, 2015. Petitioner
29 appeared through its attorney Stacy Bjordahl. The City appeared through its attorney
30 Kenneth Harper. Board member Raymond Paoella convened the hearing as the Presiding
31 Officer and Board members Charles Mosher and William Roehl attended.
32

1 The Board grants the motion to dismiss for failure to state a claim upon which relief
2 can be granted based on the issues presented by Petitioner.

3 4 II. DISCUSSION

5 The Board evaluates this as a motion to dismiss for failure to state a claim upon which
6 relief can be granted under the analogous principles of Superior Court Civil Rule 12(b)(6). It
7 is axiomatic that the Growth Management Hearings Board's authority to act in a particular
8 case is confined to only those issues presented for review in the Petition for Review. The
9 Board will consider the motion to dismiss for the following issues presented in the
10 consolidated petitions for review:
11

12
13 3.1 Is the Ordinance in compliance with RCW 36.70A.170 where it is a *de*
14 *facto* de-designation of mineral resource lands of long-term significance and
15 prohibits new mining activities on lands that are considered of long-term
16 commercial significance?

17 3.2 Is the City's Comprehensive Plan and development regulations in
18 compliance with the GMA, specifically RCW 36.70A.060 and RCW 36.70A.170,
19 where neither the Comprehensive Plan nor the development regulations, as
20 admitted by the City, has designated any mineral resource lands within the City's
21 boundaries nor has the City developed and adopted regulations to protect
22 mineral resource lands?

23 3.3 Did the City, in adopting the Ordinance, fail to be guided by the following
24 specific GMA goals found in RCW 36.70A.020: (6) protection of property rights
25 against arbitrary and discriminatory actions; and (8) maintaining and enhancing
26 natural resource-based industries?

27 3.4 Does the Ordinance preclude the conservation of mineral resource lands
28 and fail to protect mineral resource lands from incompatible adjacent land uses in
29 violation of RCW 36.70A.060?

30 3.5 Does the Ordinance substantially interfere with the Goals and Policies of
31 the GMA, specifically Policies RCW 36.70A.020(6) and RCW 36.70A.020(8)
32 which encourage the protection of property rights and the maintenance and
enhancement of natural resource lands, respectively?

1 3.6 Does the Ordinance violate RCW 36.70A.390 by re-creating a one-year
2 moratorium where the purported "work plan" is to analyze and inventory available
3 industrial lands within the City and determine whether mineral resource lands are
4 appropriate within the City in violation of RCW 36.70A.060 and RCW 36.70A.170
5 which require the city to designate, preserve and protect mineral resource lands
6 of long-term commercial significance? [Case No. 15-1-0002]

7 3.6 Does the Ordinance, when coupled with the enactment of Ordinance
8 Nos. 15-005, 15-009, and 15-013, violate RCW 36.70A.390 by establishing a
9 one-year moratorium where the purported "work plan" is to analyze and inventory
10 available industrial lands within the City and determine whether mineral resource
11 lands are appropriate within the City in violation of RCW 36.70A.060 and RCW
12 36.70A.170 which require the city to designate, preserve and protect mineral
13 resource lands of long-term commercial significance? [Case No. 15-1-0003]

14 3.7 Is the Ordinance in violation of RCW 36.70A.170 by elevating and
15 placing a greater importance and priority on the preservation of industrial lands
16 over mineral resource lands by prohibiting mining and mining activities on lands
17 which are of commercial long-term significance for the purpose of protecting
18 industrial land supply?

19 3.8 Does the Ordinance substantially interfere with the fulfillment of the goals
20 of the GMA, specifically RCW 36.70A.020(6) and RCW 36.70A.020(8) where the
21 City has failed to designate and protect mineral resource lands in its
22 Comprehensive Plan and development regulations and has further interfered with
23 the ability to mine and extract minerals of long-term significance through the
24 enactment of a moratorium?

25 Petitioner's issues focus predominantly on alleged violations of RCW 36.70A.060 and
26 RCW 36.70A.170, which respectively provide in pertinent part as follows:

27 **RCW 36.70A.060(1)(a):** Each county that is required or chooses to plan under
28 RCW 36.70A.040, and each city within such county, shall adopt development
29 regulations on or before September 1, 1991, to assure the conservation of
30 agricultural, forest, and mineral resource lands designated under RCW
31 36.70A.170. . . . Such regulations shall assure that the use of lands adjacent
32 to agricultural, forest, or mineral resource lands shall not interfere with the
continued use, in the accustomed manner and in accordance with best
management practices, of these designated lands for the production of food,
agricultural products, or timber, or for the extraction of minerals.

1 **RCW 36.70A.170(1):** On or before September 1, 1991, each county, and each
2 city, shall designate where appropriate:

3 (a) Agricultural lands that are not already characterized by urban growth and
4 that have long-term significance for the commercial production of food or other
5 agricultural products;

6 (b) Forest lands that are not already characterized by urban growth and that
7 have long-term significance for the commercial production of timber;

8 (c) Mineral resource lands that are not already characterized by urban growth
9 and that have long-term significance for the extraction of minerals.,

10 Under the combined provisions of RCW 36.70A.040, RCW 36.70A.060, RCW
11 36.70A.130, RCW 36.70A.131, and RCW 36.70A.170, all Washington cities and counties
12 are required to designate and conserve mineral resource lands of long-term commercial
13 significance. In the Petitions for Review, however, Petitioner did not cite nor allege any
14 violations of RCW 36.70A.040 [requiring counties and cities to conserve mineral resource
15 lands], nor RCW 36.70A.130 and 36.70A.131 [requiring counties and cities to review and
16 revise mineral resource designations and development regulations].

17 RCW 36.70A.040, RCW 36.70A.130, and RCW 36.70A.131 fall outside of the
18 Board's review authority in the present case since Petitioner did not raise them in the
19 Petitions for Review. As to conserving mineral resource lands, this consolidated case is
20 limited to Petitioner's allegations that the City violated RCW 36.70A.060 and RCW
21 36.70A.170.

22 RCW 36.70A.060 and RCW 36.70A.170 contain specific deadlines for action to be
23 taken "On or before September 1, 1991." The City of Spokane Valley did not exist in 1991
24 and was not incorporated until 2003. The City adopted its initial comprehensive plan and
25 development regulations in 2006. It may well have had an obligation to consider
26 designation and protection of mineral resource lands in conjunction with that process, and
27 has a continuing obligation to do so. However, Petitioner's PFR issue statements did not
28 include any failure to act allegations.
29
30
31
32

1 Therefore, under the limited scope of review invoked by Petitioner's filings in this
2 case, the Board finds and concludes that there is no set of facts under which the City of
3 Spokane Valley could be found to have violated RCW 36.70A.060 and RCW 36.70A.170.
4 To the extent that Petitioner's issue statements rely exclusively on RCW 36.70A.060 and
5 RCW 36.70A.170 [Issues 3.1, 3.2, 3.4, and 3.7], the Board finds and concludes that
6 Petitioners have failed to state any claim upon which relief can be granted by the Board at
7 this time.
8

9 Legal Issue 3.6 relies substantially on the alleged violation of RCW 36.70A.060 and
10 RCW 36.70A.170 and also mentions RCW 36.70A.390 relating to moratoria. But Issue 3.6
11 fails to allege any procedural violations of RCW 36.70A.390, independent of RCW
12 36.70A.060 and 36.70A.170. In addition, a procedural challenge under RCW 36.70A.390 is
13 premature as it relates to hypothetical future actions of the City in February 2016.
14

15 As to Issues 3.3, 3.5, and 3.8, Petitioner failed to allege under RCW 36.70A.020, that
16 any specific comprehensive plan provision or development regulation was not guided by
17 GMA planning goals 6 and 8.

18 In conclusion, Petitioner in this consolidated case has failed to state any claim upon
19 which relief can be granted by the Board under the limited scope of review in this particular
20 case. Petitioner failed to properly invoke the Board's jurisdiction, and this case must be
21 dismissed.
22
23
24
25
26
27
28
29
30
31
32

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32

DATED this 1st day of December, 2015.

William Roehl, Board Member